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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ED W. ELLO
P.O. Box 3248
Big Bear Lake, California 92315

Respiratory Care Practitioner License No. 1711

Respondent.

Case No. R-2019

**DEFAULT DECISION
AND ORDER**

[Government Code § 11520]

FINDINGS OF FACT

1. On or about March 17, 2006, Complainant Stephanie Nunez, in her official capacity as Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs, State of California, filed Accusation No. R-2019 against Ed W. Ello (Respondent) before the Respiratory Care Board (Board).

2. On or about May 10, 1985, the Board issued Respiratory Care Practitioner License Number 1711 to Respondent. This license will expire on March 31, 2008, unless renewed.

3. On or about March 17, 2006, Jennifer Porcalla, an employee of the Complainant Agency, served by Certified and First Class Mail a copy of the Accusation No. R-2019, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

1 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board
2 at P.O. Box 3248, Big Bear Lake, California 92315. A copy of the Accusation, the associated
3 supplemental documents, and Declaration of Service are attached hereto as Exhibit A, and
4 incorporated as if fully set forth herein.

5 4. The above-described service of the Accusation was effective as a matter of
6 law pursuant to the provisions of Government Code section 11505, subdivision (c).

7 5. On April 12, 2006, the documents served by Certified Mail were returned
8 to the Board by the U.S. Postal Service marked "Unclaimed." A copy of the postal returned
9 documents are attached as Exhibit B, and are incorporated herein by reference.

10 6. Government Code section 11506 states, in pertinent part:

11 "(a) Within 15 days after service of the accusation, the respondent may file with
12 the agency a notice of defense.

13 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
15 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
16 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

17 7. Respondent failed to file a Notice of Defense within 15 days after service
18 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
19 Accusation No. R-2019.

20 8. California Government Code section 11520 states, in pertinent part:

21 "(a) If the respondent either fails to file a notice of defense or to appear at the
22 hearing, the agency may take action based upon the respondent's express admissions or upon
23 other evidence and affidavits may be used as evidence without any notice to respondent."

24 9. Pursuant to its authority under Government Code section 11520, the Board
25 finds Respondent is in default. The Board will take action without further hearing, and based on
26 Respondent's express admissions by way of default and the evidence before it, contained in
27 Exhibit A, finds that the allegations, and each of them, in Accusation No. R-2019 are true.

28 10. The Respiratory Care Board further finds that pursuant to Business and

1 Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed
2 for in the Accusation total \$1,453.00 based on the Certification of Costs contained in Exhibit C.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent Ed W. Ello has
5 subjected his Respiratory Care Practitioner License No. 1711 to discipline.

6 2. Service of the Accusation and the related documents was proper and in
7 accordance with the law.

8 3. The agency has jurisdiction to adjudicate this case by default.

9 4. The Board is authorized to revoke Respondent's Respiratory Care
10 Practitioner License based upon violations of Business and Professions Code sections 3750,
11 subdivision (d), 3750.5, subdivision (d), 3752, 3752.5 and 490, conviction of a crime substantially
12 related to the qualifications, functions or duties of a respiratory care practitioner, and 3750.5,
13 subdivision (b), use of a controlled substance, as alleged in the Accusation.

14 5. Respondent is hereby ordered to pay the above costs of investigation and
15 enforcement of this action.

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17 ORDER

18 1. Respiratory Care Practitioner License No. 1711, heretofore issued to
19 Respondent Ed W. Ello, is hereby revoked.

20 2. If Respondent ever files an application for relicensure or reinstatement in
21 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
22 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
23 effect at the time the petition is filed.

24 3. Respondent is ordered to reimburse the Board the amount of \$1,453.00
25 for its investigative and enforcement costs. The filing of bankruptcy by Respondent shall not
26 relieve Respondent of his responsibility to reimburse the Board for its costs. Respondent's
27 Respiratory Care Practitioner License may not be renewed or reinstated unless all costs ordered
28 under Business and Professions Code section 3753.5 have been paid.

1 4. Pursuant to Government Code section 11520, subdivision (c), Respondent
2 may serve a written motion requesting that the Decision be vacated and stating the grounds relied
3 on within seven (7) days after service of the Decision on Respondent. The agency in its discretion
4 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
5 statute.

6 This Decision shall become effective on September 28, 2006.

7 It is so ORDERED August 29, 2006.

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10 Original signed by:

11 LARRY L. RENNER, BS, RRT, RPFT
12 PRESIDENT, FOR THE RESPIRATORY CARE BOARD
13 DEPARTMENT OF CONSUMER AFFAIRS
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21 Attachments:

22 Exhibit A: Accusation Case No. R-2019, Associated Supplemental Documents, and
23 Declaration of Service
24 Exhibit B Postal Returned Documents
25 Exhibit C Certification of Costs
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